

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

BILLIE MERCER, Individually and as Heir	§
To the Estate of Larry Jackson, Jr.; and	§
Larry Mercer, Individually, and as Heir to	§
The Estate of Larry Jackson, Jr.	§
Plaintiffs	§
vs.	§
CHARLES KLEINERT, and	§
THE CITY OF AUSTIN	§
Defendants	§

CIVIL ACTION NO. 1-13-cv-00830

DEFENDANT THE CITY OF AUSTIN'S
ANSWER TO PLAINTIFF'S AMENDED COMPLAINT IN INTERVENTION

TO THE HONORABLE UNITED STATES DISTRICT JUDGE LEE YEAKEL:

COMES NOW, the City of Austin, Defendant, (hereinafter "the City") and respectfully files its answer to Plaintiff's Amended Complaint in Intervention (Clerk's Docket #71).

A. PARTIES

1. The City lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 1.
 - 1a. The City lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 1a.
2. The City admits to the allegations in paragraph 2.
3. The City admits to the allegations in paragraph 3.
- 3a. The City admits that Charles Kleinert was deputized by the Federal Bureau of Investigation and was investigating a bank robbery as a federal officer and member of the Central Texas Violent Crimes Task Force when he first encountered Larry Jackson. The City

further admits that this Court has entered an opinion regarding the status of Charles Kleinert as a federal officer in Cause No. A-14-CR-388-LY. Otherwise the City lacks knowledge or information sufficient to form a belief about the truth of the remainder of the allegations in paragraph 3(a).

B. ORIGINAL LAWSUIT

4. The City admits to the allegations in paragraph 4.

C. INTERVENOR'S CLAIMS

5. The City denies the allegations in paragraph 5.

6. The City adopts by reference the answers to paragraphs 6 through 45 of Plaintiffs' Original Complaint found in the City's Answer to Plaintiffs' Original Complaint.

D. DAMAGES

7. The City denies the allegations in paragraph 7.

8. The City denies the allegations in paragraph 8.

E. EXEMPLARY DAMAGES

9. The City denies the allegations in paragraph 9.

F. ATTORNEYS FEES

10. The City denies the allegation in paragraph 10.

G. JURY REQUEST

11. The City admits to the allegation in paragraph 11.

H. PRAYER

12. The City denies all the allegations in paragraph 12, including subsections (a) – (e).

I. THE CITY'S AFFIRMATIVE DEFENSES

13. The City has full sovereign immunity both from suit and from liability for the allegations of state law violations, if any, made by the Plaintiffs.

14. The City asserts the protections and limitations of the Texas Tort Claims Act, including, but not limited to §101.023, §101.024, §101.026, §101.055, §101.056, §101.057, and §101.106.

15. The City asserts the affirmative defense of contributory negligence. Specifically, Larry Jackson, Jr. failed to exercise ordinary care for his safety. His own actions contributed at least fifty-one percent to his and Plaintiffs' and Intervenor's injuries and damages, if any.

16. To the extent applicable, the City asserts the qualified or official immunity of Kleinert.

WHEREFORE, PREMISES CONSIDERED, the City prays that Intervenor take nothing by her suit, and for attorneys' fees, costs, and any such other and further relief, general and specific, at law and in equity, to which this Defendant may show itself to be justly entitled.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 5, 2015, a true and correct copy of the foregoing document has been electronically filed on the CM/ECF system, and a copy forwarded to the following parties as follows:

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